

# **EXHIBIT E**

March 5, 2024

Via E-mail

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**Re: *The State of Texas, et al. v. Google LLC*, Case No. 4:20-cv-00957-SDJ (E.D. Tex.)**

Dear Counsel:

We write in response to your February 16, 2024 and March 5, 2024 letters regarding the source code topics, as well as in response to your representations to the Special Master and during the February 29, 2024 meet and confer.

Discovery is ongoing, and Google has the obligation to produce all documents containing information relevant to the claim or defense of any party. Scheduling Order, Dkt. No. 194. Despite Google's protestations, it is not permitted to refuse to produce documents while unilaterally deciding that "all of Plaintiffs' requests for files and directories" are "resolve[d]." Mar. 5, 2024 letter from R. McCallum.

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1. Google's Alleged Supplemental Production

In your February 16, 2024 letter, you represented that you would produce certain code files requested by the States. *See id.* at pages 2-3. Google's February 16, 2024 submission to the Special Master further states that Google has offered the additional code, citing your letter, which you contended addressed all requests. Dkt. 246 at 15.

As of March 1, 2024, however, Google had not produced the promised code. The parties' negotiations over additional snapshots of source code (discussed below) in no way prevents Google from collecting the promised code for the snapshots Google has already made available for inspection. Please confirm that all promised code will be produced no later than Friday, March 8, 2024. In light of Google's agreement that the parties are at an impasse with respect to all source code issues raised in the States January 16, 2024 letter, the States intend to raise this issue with the Special Master should the code not be promptly produced. Dkt. 235 at 12-13.

2. Bernanke Initial Implementation

On January 16, 2024, the States requested that Google make the source code for the initial implementation of Bernanke available for inspection. In response, Google offered one additional snapshot of the source code from a date of the States' choosing. *See* Feb. 16, 2024 letter from R. McCallum. But it is Google, not the States, that knows when the initial implementation of Bernanke became available. Discovery is not a guessing game and Google's request is at odds with the Federal Rules of Civil Procedure, as well as the Local Rules of the Eastern District of Texas and the rules and orders of this Court. Under Local Rule 26(d), Google must produce, "without awaiting a discovery request," information "relevant to the claim or defense of any party." Dkt. 194 at 4.

To the extent Google continues to refuse to provide a snapshot of the code on the date when Bernanke was initially implemented, the States will accept a complete January 2014 version of Bernanke if Google stipulates that no unproduced versions of source code contain any differences material to the claims at issue in this case. To the extent Google does not agree, the States understand that Google has agreed that this issue is at an impasse. Dkt. 235 at 12-13. Absent an agreement, the States will therefore raise this issue with the Special Master.

3. Project Bell

Contrary to your statements in R. McCallum's Feb. 16, 2024 letter, the States do not believe the code for Project Bell has been produced. Accordingly, please identify the code Google believes covers Project Bell, as well as the specific code Google believes executes Project Bell. Otherwise, the States understand the Parties to be at an impasse, and will raise this issue with the Special Master. Dkt. 235 at 12-13.

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4. Missing Source Code Files and Folders

We understand from R. McCallum's Feb. 16, 2024 letter that Google is refusing to produce all of the source code in the folders [REDACTED]. *See id.* at 2. Accordingly, we understand that Google will not rely on any code in any of the above folders, or any of their subfolders (other than the specific files in those subfolders that have been made available for inspection), for any reason.

Google's representations, however, do not excuse its response. Google has not addressed numerous additional unproduced folders that were requested, including the [REDACTED] folder, containing unproduced code discussed by the [REDACTED] code, which is facially relevant to UPR. Nor has Google addressed whether it will produce the files in [REDACTED] and [REDACTED] "that are used by Bernanke, referenced in snapshots, and are relevant to understanding how Bernanke operates and what data is logged." Jan. 16, 2024 letter from Z. DeRose.

Please confirm that you will produce all code in the above folders by March 8, 2024. In light of Google's agreement that the parties are at an impasse with respect to all source code issues raised in the States January 16, 2024 letter, the States intend to raise this issue with the Special Master should the code not be promptly produced. Dkt. 235 at 12-13.

5. Cassandra Software

On January 16, 2024, and pursuant to the Confidentiality Order, the States requested Cassandra software be loaded on to the source code computers to review code that has already been produced. Jan. 16, 2024 letter from Z. DeRose at 6. Google did not respond. The States again raised the issue at the February 12 meet and confer, yet Google did not address it in Google's February 16, 2024 letter. Finally, the States raised the issue on a separate meet and confer on February 29, 2024, where Google agreed to investigate and respond regarding the installation of Cassandra on source code computers. Nevertheless, despite responding via letter about the other issues addressed in the meet and confer, Google has again failed to respond regarding Cassandra. *See* Mar. 5, 2024 letter from R. McCallum.

Under the Confidentiality Order, "The Producing Party will make a good faith effort to provide legitimate review tools to the Source Code Computer as requested by the Receiving Party." Dkt. 182, App'x B at Para 10. Google has not done so. Rather than install the software as requested and required under the Confidentiality Order, Google has delayed and refused to respond.

Please confirm that Cassandra will be installed by March 8. In light of Google's agreement that the parties are at an impasse with respect to all source code issues raised in the States January 16, 2024 letter, the States intend to raise this issue with the Special Master should Cassandra not be installed by March 8. Dkt. 235 at 12-13.

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6. Bernanke Experiment Files

On January 16, 2024, the States requested Google produce the inputs to Bernanke from experiment code, providing specific examples. Despite being called on by the source code and unquestionably relevant to the operation of Bernanke, Google has refused to produce such inputs, claiming that the SSTables called by the Bernanke source code “is not a request for code.” Feb. 16, 2024 letter from R. McCallum. But Google agrees that its code [REDACTED].” *Id.* The SSTables, then, are indisputably relevant to the operation of Bernanke. Moreover, as the States explained on the February 29 meet and confer, Google has *already* made certain SSTable files available for inspection on the source code computer, confirming that SSTable files are source code. The presence of these SSTable files is the reason that the States requested the Cassandra software, which is able to load and analyze such files.<sup>1</sup> As Google has refused to produce relevant code, and in light of the Parties’ previous agreement, the Parties are at an impasse. Dkt. 235 at 12-13. Accordingly, the States intend to raise this issue with the Special Master.

Sincerely,

/s/ Zeke DeRose III

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<sup>1</sup> To the extent that Google now contends that SSTable files are *not* source code, these files should be removed from the source code computer (and the relevant Bernanke SSTable files separately gathered) and produced natively to the States.